HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 32766 of 1998

Dated 19th September, 2007

Between
G.S.Rajasekharam, died , Per LRs

…Petitioner

and

The Deputy Registrar,
Cooperative Societies/Divisional Cooperative Officer,
Nellore, Nellore District and anr.

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 32766 of 1998

ORDER:

In this Writ Petition, the petitioner has questioned the order dated 14-9-1998 passed in O.A.No. 133 of 1994 by the Chairman, AP Cooperative Tribunal, Vijayawada, confirming the order of surcharge dated 14-7-1994 in Proceedings Rc.No.2884/87-B passed by the Deputy Registrar of Cooperative Societies, Nellore.

The petitioner was the President of Thotapallegudur Primary Agricultural Cooperative Society. On the ground that the affairs of the said society were found not satisfactory, an inspection as contemplated under Section 52 of the AP Cooperative Societies Act, 1964 was ordered by the District Cooperative Officer, Nellore and the Inspecting Officer had reported that the petitioner had misappropriated an amount of Rs.15,888.46 Ps of the society. On the above said inspection note of the Inspecting Officer, proceedings were initiated for

surcharge as contemplated under Section 60 of the AP Cooperative Societies Act, 1964. It was alleged against the petitioner that the petitioner had collected loan amounts from the members of the Society and the said amounts were not entered in the cashbook. It was further alleged that the petitioner withdrew some amounts by self cheques in the capacity of the President of the said Society and the said amounts were not entered in the cash book. On the above said allegations, show cause notice was issued to the petitioner as contemplated under Section 60(1) of the AP Cooperative Societies Act 1964 and the same was acknowledged by the petitioner on 4-11-1991. Pursuant to the representation filed by the petitioner for supply of the copies of the inspection report referred to in the show cause notice, the same were supplied to him. But, however, though the petitioner was given opportunity to file explanation and for personal hearing, neither he filed explanation nor availed opportunity of personal hearing. On examining the inspection notes and statements recorded at the time of inspection and also looking into the cash books and records, the primary authority had passed surcharge order dated 14-7-1994 for recovery of an amount of Rs.15,888.46Ps from the petitioner, apart from an amount of Rs.17,893.25Ps from the Secretary of the society, with interest at the rate of 18% p.a. from the date of the order till realization.

As against the said order, the petitioner preferred appeal as contemplated under Section 76(1) of the AP Cooperative Societies Act, 1964. The appellate authority, by impunged order, dated 14-9-1998 passed in O.A.No.133 of 1994 dismissed the appeal preferred by the petitioner. Aggrieved thereby, the petitioner has come up with this Writ Petition.

It is submitted by the learned Counsel for the petitioner that the order of surcharge, as confirmed by the appellate authority, was passed without conducting independent enquiry. It is submitted that the order of surcharge was passed based on the report submitted by the Inspecting Officer pursuant to the inspection conducted under Section 52 of the AP Cooperative Societies Act, 1964. It is further submitted that no opportunity was given to the petitioner and the interest awarded at 18% is exorbitant.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents that as the report of the Inspecting Officer revealed that the petitioner had misappropriated the funds of the society, independent proceedings were initiated for surcharge as contemplated under Section 60 of the AP Cooperative Societies Act, 1964. It is submitted that in spite of further opportunity granted to the petitioner in the enquiry initiated under Section 60 of the AP Cooperative Societies Act, 1964 and supply of copies of inspection note pursuant to his request, he did not choose to file explanation and in that view of the matter, on considering the material on record, orders were passed. It is further submitted that as much as opportunity by way of show cause notice and further opportunity of personal hearing were given to the petitioner, it cannot be said that orders were passed in violation of the principles of natural justice. While contending that the interest awarded is also in accordance with the provisions of the AP Cooperative Societies Act, 1964, it is submitted that there are no grounds for interference.

In the instant case, on the finding that that the affairs of the society were not satisfactory, inspection as contemplated under

Section 52 of the AP Cooperative Societies Act 1964 was made. During the inspection, it was noticed that certain financial irregularities were committed by the petitioner and the Secretary of the society. In view of the said report, independent proceedings were initiated under Section 60 of the AP Cooperative Societies Act 1964 and even, pursuant to the request of the petitioner; copies of the inspection report were also supplied to him. In spite of the same, the petitioner did not choose to file explanation to the show cause notice. It was specifically alleged against the petitioner that he had misappropriated the loan amounts by collecting from the members of the society and some amounts were withdrawn through self cheques in the capacity of the President of the Society and the said amounts were not accounted to the cash book. If the said allegations are false, the petitioner could have filed explanation to the show cause notice. In the absence of any explanation, referring to the inspection report, looking into cashbooks, and other material available on record, the order of surcharge was passed. Merely because proceedings were initiated under Section 60 of the Act referring to the inspection report made under Section 52 of the AP Cooperative Societies Act, 1964, it cannot be said that there is no independent enquiry conducted before passing the order of surcharge. In the instant case, from the facts as narrated above, it is clear that after the inspecting authority noticed the financial irregularities, an independent enquiry was conducted as contemplated under Section 60 of the AP Cooperative Societies Act, 1964. In view of the show cause notice given to the petitioner, and further opportunity of hearing provided to him by the primary authority, it cannot be said that order of surcharge was passed without giving any opportunity. However, I find some force in the contention of the learned Counsel for

the petitioner that, interest at the rate of 18% per annum imposed on surcharge amount is arbitrary. Section 60(1) of the AP Cooperative Societies Act, 1964 lays down that the authority, if, during the course of an audit under Section 50 or an enquiry under Section 51 or an inspection under Section 52 or Section 53, it appears that any person who is in charge of the management and affairs of the society had misappropriated or fraudulently retained any money of the society, the authority can order for repayment of such amount with interest at such rate which it thinks just and appropriate. There is no specific percentage of interest provided, but however, always charging of interest should be, by taking into account the normal lending rate being charged by the commercial banks. In that view of the matter, I deem it appropriate to hold that interest at the rate of 18% per annum ordered on surcharge amount is not just and appropriate. Having regard to the facts and circumstances of the case, and, taking into the prevailing interest rates during the relevant period, I am of the view of that interest at 12% per annum on the surcharge amount of Rs.15,888-46Ps from the date of order till realization will meet the ends of justice. Accordingly, the order under challenge, dated 14-7-1994, as confirmed by the appellate authority by order dated 14-9-1998 stands modified only to the extent of interest and the same shall be charged at 12% per annum. However, as it is stated that 50% of the surcharge amount was already paid and during the pendency of the Writ Petition, the petitioner against whom surcharge order was passed died and Petitioners 2 to 4 are brought on record as Legal Representatives, I grant three months' time to the petitioners for payment of balance amount.

The Writ Petition is disposed of accordingly. No order as to costs.

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JUSTICE R. SUBHASH REDDY

DATE: 19-0-2007.
Msnr.